

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING VARIANCE REPORT (#FZV-11-02)
DUGAN/STOKKE/ANGELL
DECEMBER 20, 2011

A report to the Flathead County Board of Adjustment regarding a request by Sarah, Jolene and Paloma Dugan, Lesley Stokke and Bianca Angell for a variance to Section 3.07.040(2) "Bulk and Dimensional Requirements" for a "SAG-10 Suburban Agricultural" zone, requiring a lot or parcel to maintain an average depth no greater than three (3) times its average width, unless the lot or parcel's width is greater than 300 feet. The variance requested would apply to five adjacent tracts of land located at 494, 482, 440, 414, and 386 Holt Drive in Bigfork and within the Holt zoning district.

The Flathead County Board of Adjustment will hold a public hearing on the variance request on January 3rd, 2012 beginning at 6:00 P.M. in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this application are available for public inspection at the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The proposed variance is specific to a property located within the jurisdiction of the Bigfork Land Use Advisory Committee (BLUAC). BLUAC will hold a public meeting on December 29th, 2011, beginning at 4:00 PM in the basement of Bethany Lutheran Church in Bigfork, to review the variance request and make a recommendation to the Flathead County Board of Adjustment. This space is reserved for a summary of the Committee's discussion and recommendation.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on the proposed land use on January 3rd, 2012 beginning at 6:00 P.M. in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. This space is reserved for a summary of the Flathead County Board of Adjustment's discussion and decision at that hearing.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicant(s)/Landowners

Sarah, Jolene & Paloma Dugan
Lesley Stokke
Bianca Angell
13110 N.E. 177th PL #187
Woodinville, WA 98072
rlsortino@gmail.com

ii. Technical Assistance

Olaf C. Ervin
1658 North Fork Rd.
Columbia Falls, MT 59912
olaf.ervin@gmail.com

B. Property Location

The subject properties are located on the south side of Holt Drive in Bigfork, approximately $\frac{3}{4}$ of a mile west of the intersection of Holt Drive and MT Highway 35 (see Figure 1 below). The legal description and size of each of the properties is as follows:

- Parcel A of Certificate of Survey No. 18102 (Tracts 2ABC, 2ABC-100) – 20.00 acres
- Parcel B of Certificate of Survey No. 18102 (Tracts 2AB, 2AB-100) – 25.35 acres
- Parcel C of Certificate of Survey No. 18102 (Tract 2ABB) – 13.48 acres
- Parcel D of Certificate of Survey No. 18102 (Tract 2ABA) – 10.00 acres
- Parcel E of Certificate of Survey No. 18102 (Tract 2A) – 10.71 acres

All in Section 35, Township 27 North, Range 20 West, P.M.M., Flathead County, Montana (see Figure 2 below).

Figure 1: Subject properties outlined in red.

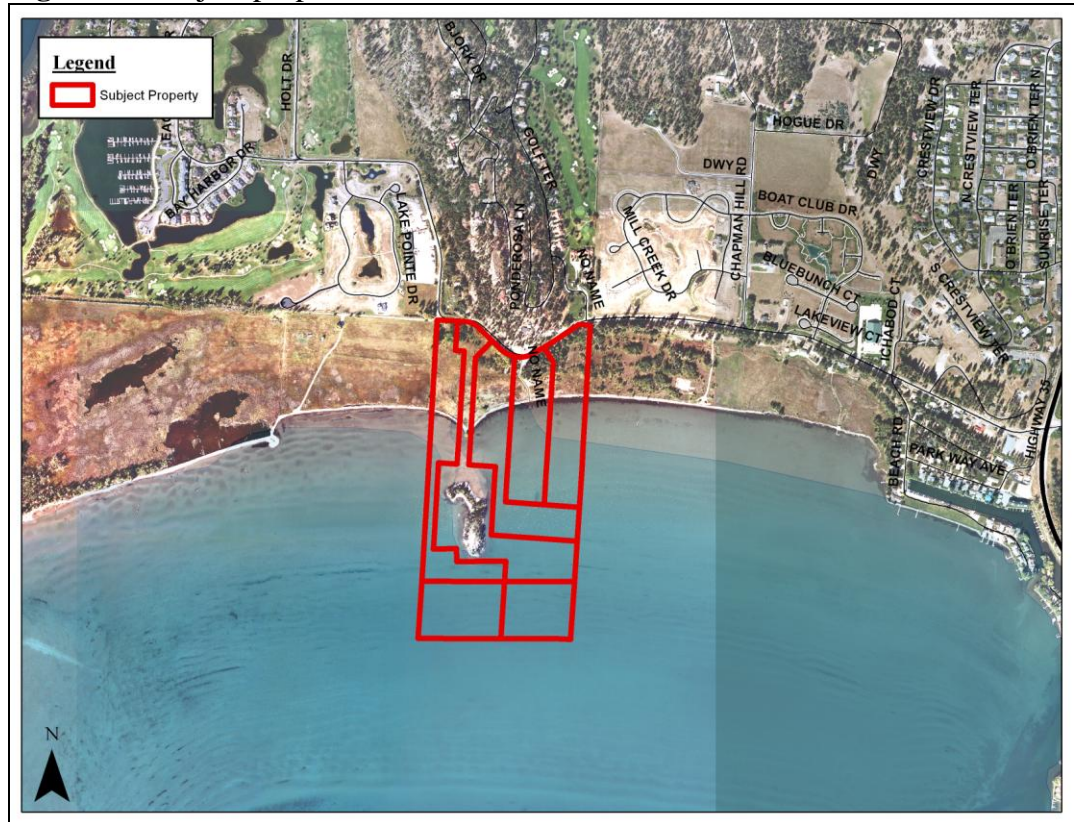
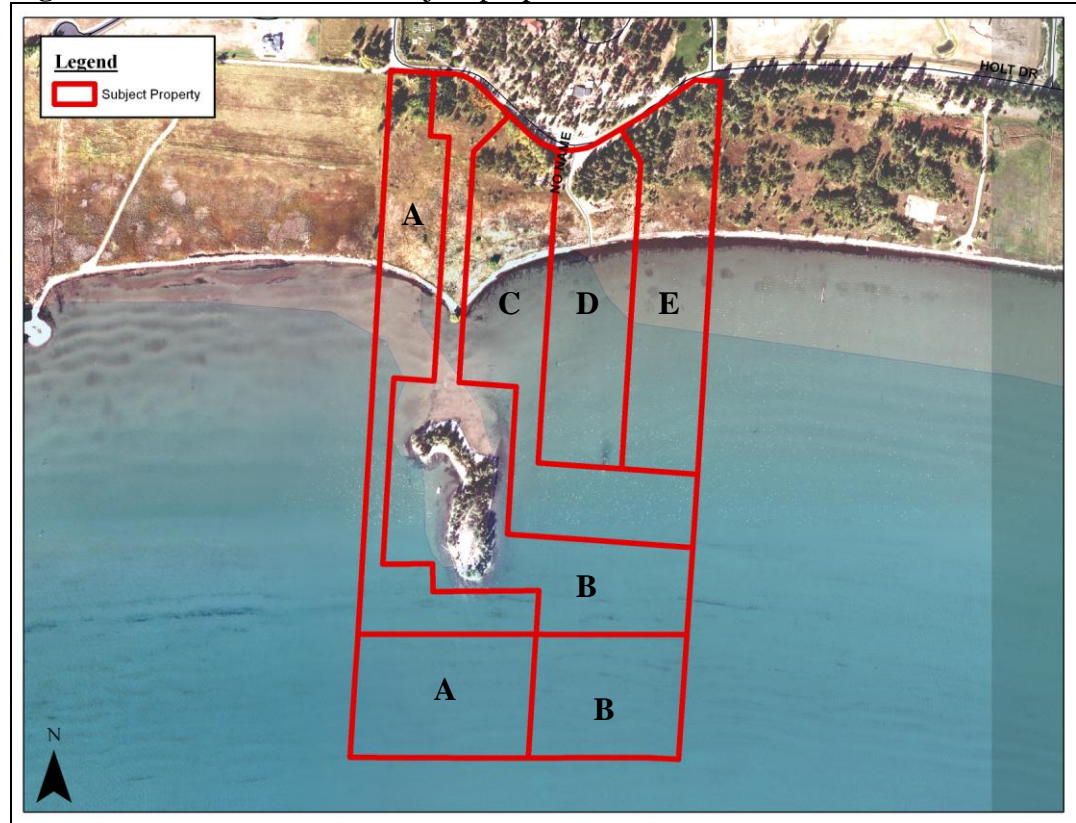


Figure 2: Detailed aerial of subject properties.



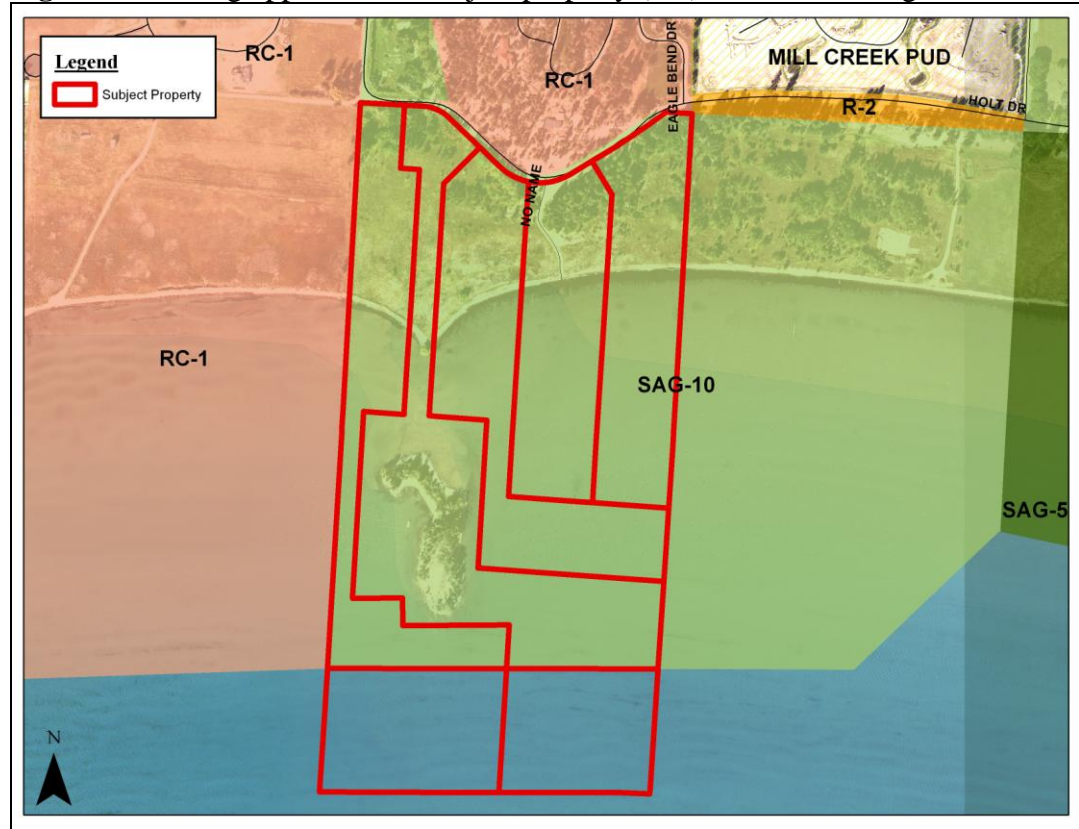
C. Existing Land Use(s) and Zoning

The subject properties are located within the Holt zoning district and are currently zoned “SAG-10 Suburban Agricultural”, a district intended to provide and preserve *“agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development”* [FCZR Section 3.07.010]. All of the parcels are currently undeveloped according the State of Montana’s Computer Assisted Mass Appraisal (CAMA) Parcel Details Report.

D. Adjacent Land Use(s) and Zoning

As shown by Figure 3 below, parcels immediately north and west of the area in question are zoned “RC-1 Residential Cluster”, while parcels to the immediate east are similarly zoned “SAG-10 Suburban Agricultural”. Flathead Lake comprises the lower portions of the subject property, and is unzoned beyond the property boundaries. The area is primarily residential in nature, with lot sizes ranging from ¼ of an acre in the Mill Creek Subdivision/PUD located to the north and east, to ½ acre lots in the Eagle Bend Subdivision to the immediate north, to well over 10 acre tracts of land to the east. Land to the immediate west is owned by the Montana Department of Fish, Wildlife & Parks and is currently open space open to the public.

Figure 3: Zoning applicable to subject property (red) and surrounding area.

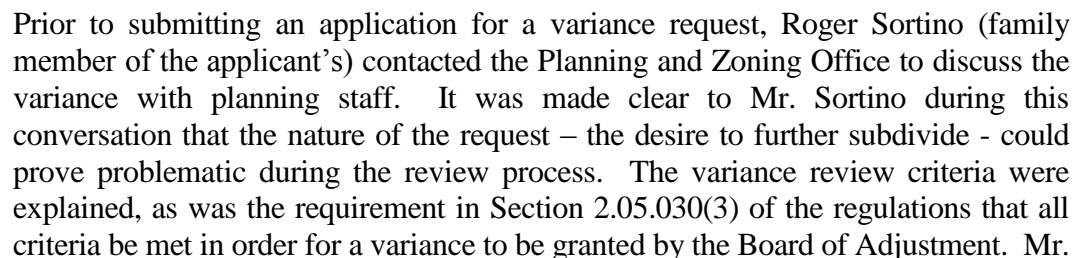


E. Summary of Request

The applicants have requested a variance to Section 3.07.040(2) of the Flathead County Zoning Regulations regarding “Bulk and Dimensional Requirements” for property located within a “SAG-10 Suburban Agricultural” zone. This section of the regulations requires a parcel or lot to have an average depth no greater than three (times) its width, unless the width of the lot or parcel exceeds 300 feet. For example, a tract of land 150 ft. in width would be limited in length to 450 ft. According to Section 7.12.150 of the zoning regulations, lot width is typically assessed according to the dimension of the lot line fronting the street. However, in cases of irregularly shaped lots, the lot width is assessed at the building line. Although the parcels are currently undeveloped, it is reasonable to assume that the building line(s) for each property would be located in the northern 1/3 of each lot, as the lower portion of the lots extends into Flathead Lake. As shown by Certificate of Survey No. 18102 and included with the application materials, the northern buildable portion of Parcel A ranges from 175-250 feet in width; the northern buildable portion of Parcel B ranges from 100 to approximately 260 feet in width; the northern buildable portions of Parcel C and D are approximately 335 feet in width apiece, and the northern buildable portion of Parcel E is 300 feet in width. The lengths of each lot are similarly varied, ranging from 949.56 linear feet (Parcel E) to approximately 2628.90 linear feet (Parcel A); however, only Parcels A and B are currently out of conformance with the 3:1 length/width ration

The current lot configuration resulted from a series of boundary line adjustments and family transfers over the years. Parcels A and B were created by a boundary line adjustment in 2007, well after the Holt zoning district was in place (per Resolution No. 533A on January 17th, 1985), meaning their configuration is not legally non-conforming. However, the boundary line adjustment has been recorded for over four years, and the remaining Parcels C, D and E all conform to the bulk and dimensional requirements of the zoning district in place.

Figure 4: Proposed layout following family transfer.



Sortino chose to proceed with the variance request even after he was made aware that certain criteria likely could not be met.

F. Compliance with Public Notice Requirements

Notification was mailed to adjacent property owners within 150 feet of the subject property on December 9th, 2011, pursuant to Section 2.05.030(2) of the Zoning Regulations. Legal notice of the public hearing on this application will be published in the December 18th, 2011 edition of the Daily Interlake.

G. Agency Referrals

No agency referrals were sent regarding the variance request, as a variance to the length-to-width ration requirement of the “SAG-10” district would not appear to negatively impact a public agency.

III. COMMENTS RECEIVED

A. Public Comments

No written public comments have been received to date regarding the variance request. It is anticipated any individual wishing to provide public comment on the application will do so during the Bigfork Land Use Advisory Committee meeting on December 29th, 2011, or during the public hearing scheduled for January 3rd, 2012.

B. Agency Comments

No agency referrals were sent regarding the variance request; no comments have been received to date.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Section 2.05.030 of the Flathead County Zoning Regulations, what follows are review criteria for consideration of a variance request, as well as suggested findings of fact based on review of each criterion. It should be noted Section 2.05.030 of the Flathead County Zoning Regulations states “No variance shall be granted unless the Board (of Adjustment) finds that all of the following conditions are met or found to be not pertinent to the particular case”:

A. Strict compliance with the provisions of these regulations will:

i. Limit the reasonable use of property;

Each of the five properties involved in this variance request meet the minimum lot size requirement of ten (10) acres for a SAG-10 zone, with two of the five parcels being twenty acres or larger. The parcels’ location along the north shore of Flathead Lake results in a large portion of each property – over 40% in some instances according to the application – being covered by the lake itself. This configuration is not uncommon with regard to lakeshore properties in the county, as many parcels similarly located extend into the lake itself and include a portion of the lakebed in the overall lot acreage calculations.

None of the five properties is currently developed, although each appears to have adequate acreage between the approximate high water mark and Holt Drive upon which to construct a residence and any associated outbuildings in the future. The purpose for requiring a 3:1 length to width ratio is to preclude excessively long, skinny, unusable lots from being created in larger zoning districts; while two of the five parcels do not currently conform to this ratio (as previously discussed), requiring the remaining three parcels to abide by the appropriate length to width ratio does not limit the reasonable use of the existing properties. If anything, conformance with this ratio protects reasonable use by maintaining a developable lot configuration and size. The stated purpose of the variance – circumventing the length to width ratio to allow the creation of two additional parcels – would appear to further constrain the useable area of the five existing parcels, and would result in all seven parcels being out of conformance with the applicable regulations.

Finding #1 - Strict compliance with the regulations would not limit the reasonable use of the five parcels under review because those parcels currently have adequate useable space to develop, and allowing a variance to the length-to-width ratio would further constrain the developable areas of the existing lots for the purpose of further subdividing.

ii. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district.

The neighborhood in which the subject property is located is predominantly residential, although lot sizes vary greatly due to the range of zoning in place. As shown in Figure 5 below, four parcels to the immediate east of the properties under review are similarly situated along the lakeshore and zoned SAG-10. At first glance each of the four parcels appears to exceed the length-to-width ratio of 3:1, indicating they enjoy a similar right as is being requested by the applicants. However, upon further research of the existing certificates of survey, the width of each of the adjacent parcels exceeds 300 feet, thereby exempting them from the required 3:1 ratio. It should be noted the configuration of these parcels is very similar to the five properties under review, with more than half of the surveyed 'lot' extending into Flathead Lake.

Finding #2 - Strict compliance with the regulations would not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because other lakefront parcels similarly zoned have met the intent of the length-to-width requirement by having widths in excess of 300 feet.

B. The hardship is the result of lot size, shape, topography, or other circumstances over which the applicant has no control.

No hardship currently exists applicable to the subject properties with regard to lot size, shape or topography. Each of the five lots in question meets or exceeds the required acreage of a SAG-10 district. While the shape of the parcels is somewhat unique, each appears to have adequate developable acreage as currently configured. Three of the five parcels currently conform to the bulk and dimension requirements of Section 3.07.040(2) FCZR regarding length-to-width. The presence of Flathead Lake does limit the amount of useable acreage of each lot, but as discussed Section IV(A)(i) above, the granting of the requested variance would appear to further reduce and constrain the developable acreage of each parcel, actually creating more of a potential hardship than actually exists at present.

The hardship described by the applicant is the current limit placed on further subdivision as a result of the length-to-width ratio. Two additional parcels cannot currently be created from the existing five, as the result would be all seven lots not being able to conform to the 3:1 length-to-width ratio set forth in the regulations. The variance has been requested to alleviate this perceived hardship and allow for further subdivision of the properties. The stated hardship, however, has no affect on the reasonable use or development of the existing parcels under review.

Finding #3 – The hardship described by the applicants is not the result of lot size, shape or topography, but is the result of the applicants’ desire to further subdivide the property and reduce the widths of the existing and proposed parcels. This hardship is therefore created by the applicants because the parcels in their current state are not limited in acreage or use under the existing zoning and length-to-width ratio requirements, and the applicants simply desire to subdivide and create additional lots.

C. The hardship is peculiar to the property.

As discussed throughout the application materials, the amount of acreage presently underwater on each of the five existing parcels is somewhat unique, creating a situation where visually, each property appears much shorter than it actually is due to the limited ground above the high water mark. The applicant makes the compelling argument that the dimensions of each lot above the high water mark – i.e. the useable area of each parcel – actually meet the length-to-width requirements of the zoning district. However, the acreage of each parcel lying above the high water mark does not meet the minimum lot size requirements of a SAG-10 zone. Under these circumstances, it would seem unreasonable to utilize *only* the acreage out of water for the purposes of meeting the length-to-width ratio required while using the acreage of the *entire* parcel to meet the minimum lot size requirements of the district.

As previously discussed, it is not uncommon for property along the lakeshore to extend well into the lake itself, with a certain amount of acreage underwater. The

hardship perceived by the applicant – the 3:1 ratio requirement preventing the creation of two additional parcels – is not a hardship that results from the amount of property underwater or the configuration of the existing parcels themselves, but is a hardship inherent to the SAG-10 zoning in place. The five existing parcels are not currently constrained by the length-to-width provisions of the zoning; three of the five parcels currently meet the requirement, while the remaining two parcels are currently non-conforming and would not be affected by the granting – or denial – of the variance requested. The zoning in place merely precludes further division of land due to the length-to-width requirements of the SAG-10 district; this scenario is not unique or peculiar to this set of properties, as zoning often limits further subdivision of lots in districts county-wide, not just SAG-10. Taking a different perspective, the length-to-width ratio is unique to the suburban agricultural zoning designations; however, adjacent properties are similarly situated, similarly zoned and currently conform to the provision, indicating its applicability is not unique to the five parcels under review.

Finding #4 – The perceived hardship is inherent to the SAG-10 zoning in place and the limits placed on further subdivision of the existing parcels, and is not the result of a unique or peculiar situation constraining the five existing parcels under review.

D. The hardship was not created by the applicant.

As discussed under Criteria IV.B above, the perceived hardship is the result of the applicants' desire to further subdivide, which requires alleviation of the length-to-width ratio applicable to all five existing properties under review (as well as the two lots proposed). As currently configured, the existing five parcels do not appear to be negatively affected by the requirement to maintain the 3:1 ratio required of parcels zoned SAG-10.

Finding #5 – The proposed hardship is wholly created by the applicant because it is the direct result of the applicants' desire to further subdivide, and the five parcels under review do not appear to be negatively affected by the length-to-width ratio currently applicable.

E. The hardship is not economic (when a reasonable or viable alternative exists).

The hardship does not appear to be economic based on rationale provided in the application for a variance. The applicants have stated their intent is to create two additional parcels to be conveyed to family members in the future; the variance requested would allow them to complete this family transfer in conformance with the zoning in place.

Finding #6 – The hardship does not appear economic because the stated intent of the variance request is to alleviate the length-to-width requirements for the purpose of completing a family transfer, and would not result in immediate financial gain for the applicants.

F. Granting the variance will not adversely affect the neighboring properties or the public.

The proposed variance would have a minimal impact on adjacent properties and the general public, as the parcels would continue to be regulated for land use and intensity of development pursuant to the SAG-10 zoning district requirements in place. The application states that should the parcels be developed in the future, all development will connect to public water and sewer facilities provided by the Bigfork Water and Sewer District, limiting the impacts resulting from individual wells and septic drain fields. This is due to the fact the parcels are currently mapped in special flood hazard area, which limits the capacity for onsite well and septic facilities. It is likely that if the variance is approved, two additional lots will be created from the existing five, all of which would access directly onto Holt Drive to the north. Given the surrounding character of the area, the additional density would not appear to have an adverse affect on the community. The potential increase in the number of driveways directly accessing a ¼ mile stretch of Holt Drive may have a modest impact on the public in this area; reduced lot widths mean there could be more driveways crowded into a limited amount of space. However, these impacts would be mitigated by the Flathead County Road and Bridge Department's review and approval of all new driveway encroachments along the road.

Finding #7 – Granting of the variance request would not have a significant impact on neighboring properties or the public because the properties would continue to be regulated in accordance with the SAG-10 zoning in place, future development on the subject properties would utilize public water and sewer utilities and undergo review for direct driveway access onto Holt Drive, and because the overall density and lot size(s) would remain compliant with the underlying zoning and consistent with the surrounding neighborhood.

G. The variance requested is the minimum variance which will alleviate the hardship.

As previously stated, there is no existing hardship that requires 'alleviation'; the hardship proposed by the applicants is directly related to the ability to create two additional parcels from the existing five. The applicant has requested a wholesale variance to the length-to-width ratio that would apply to seven parcels, if granted; the five existing parcels as well as the two proposed. Upon review, it would seem reasonable that an alternate configuration of the existing and proposed parcels could allow some parcels to remain compliant with the length-to-width ratio (or greater than 300 ft. in width). However, this alternate configuration could limit the functionality of the two proposed lots; therefore it seems reasonable that the variance be applied to all seven parcels if granted.

Finding #8 – The variance requested does not alleviate an existing hardship but a perceived hardship due to the current inability to further subdivide, and would appear to be the minimum variance necessary to alleviate this perceived hardship and allow for the functional configuration of both the existing and proposed parcels.

H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.

Granting of the requested variance would confer special privilege to the applicants by allowing them relief from a bulk and dimensional requirement that is applicable to, and adhered by, other similarly situated lots in the district. Relief from this requirement would be for the sole purpose of creating additional lots, as opposed to relieving an outright denial of reasonable use. Were an adjacent property or group of properties to request a variance to length-to-width requirements, the request would be reviewed similarly using the same criteria as above. Because the length-to-width ratio is not currently constraining the reasonable use of any of the existing five parcels, the sole purpose of the variance request is to allow further subdivision of lots. As previously discussed, many parcels throughout the County are limited from further subdivision as a result of the zoning in place. That limitation is not construed to be a hardship if the property can be developed and utilized for any of the permitted or conditionally permitted uses listed for that district. Such is the case with the existing five parcels requesting the variance. Each parcel has developable acreage, and the 3:1 length-to-width ratio does not preclude any of the parcels from developing in the future; therefore Section 3.07.040(2) of the zoning regulations is not denying or limiting reasonable use of the existing properties. It is, however, limiting further subdivision, a limit that applies not only to the subject properties and adjacent parcels, but to any property zoned for a certain minimum lot size or dimension throughout the County.

Finding #9 – Granting of the variance would confer a special privilege that is denied other similar properties in the district because similarly situated parcels not being denied reasonable use adhere to the length-to-width ratio requirements and would be precluded from subdividing further as a result, and because the lot width requirements currently do not restrict the existing parcels from developing in a manner similar to surrounding properties zoned SAG-10.

V. SUMMARY OF FINDINGS

1. Strict compliance with the regulations would not limit the reasonable use of the five parcels under review because those parcels currently have adequate useable space to develop, and allowing a variance to the length-to-width ratio would further constrain the developable areas of the existing lots for the purpose of further subdividing.
2. Strict compliance with the regulations would not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because other lakefront parcels similarly zoned have met the intent of the length-to-width requirement by having widths in excess of 300 feet.
3. The hardship described by the applicants is not the result of lot size, shape or topography, but is the result of the applicants' desire to further subdivide the

property and reduce the widths of the existing and proposed parcels. This hardship is therefore created by the applicants because the parcels in their current state are not limited in acreage or use under the existing zoning and length-to-width ratio requirements, and the applicants simply desire to subdivide and create additional lots.

4. The perceived hardship is inherent to the SAG-10 zoning in place and the limits placed on further subdivision of the existing parcels, and is not the result of a unique or peculiar situation constraining the five existing parcels under review.
5. The proposed hardship is wholly created by the applicant because it is the direct result of the applicants' desire to further subdivide, and the five parcels under review do not appear to be negatively affected by the length-to-width ratio currently applicable.
6. The hardship does not appear economic because the stated intent of the variance request is to alleviate the length-to-width requirements for the purpose of completing a family transfer, and would not result in immediate financial gain for the applicants.
7. Granting of the variance request would not have a significant impact on neighboring properties or the public because the properties would continue to be regulated in accordance with the SAG-10 zoning in place, future development on the subject properties would utilize public water and sewer utilities and undergo review for direct driveway access onto Holt Drive, and because the overall density and lot size(s) would remain compliant with the underlying zoning and consistent with the surrounding neighborhood.
8. The variance requested does not alleviate an existing hardship but a perceived hardship due to the current inability to further subdivide, and would appear to be the minimum variance necessary to alleviate this perceived hardship and allow for the functional configuration of both the existing and proposed parcels.
9. Granting of the variance would confer a special privilege that is denied other similar properties in the district because similarly situated parcels not being denied reasonable use adhere to the length-to-width ratio requirements and would be precluded from subdividing further as a result, and because the lot width requirements currently do not restrict the existing parcels from developing in a manner similar to surrounding properties zoned SAG-10.

VI. CONCLUSION

Section 2.05.030 (3) of the Flathead County Zoning Regulations states a variance shall not be granted unless all of the review criteria have been met or are found not to be pertinent to a particular application. Based upon the 9 draft findings of fact presented in this staff report, the variance request fails to meet all eight criteria required.